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Scotland vol 9. 25

ACCOUNT
OF THE
PROCEEDINGS

OF THE

Privy Council of SCOTLAND

AGAINST

David Baillie,

With Relation to the

P L O T.

Taken from Original Papers and Records.

L O N D O N:

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David Ballie



P L O T

Taken from Original Papers and Records

Price 2 Shillings

A True NARRATIVE of the Proceedings in Scotland against David Baillie, in February 170³₄.

IN July last, there were several Foreign Letters Writ in a Gibberish Language, Intercepted at the Posthouse of Edinburgh; at the time when several Officers were Arrived there from France, upon pretence of Accepting the Benefit of Her Majesty's Act of Indemnity, Published some Months before in that Kingdom. It was Evident in the Looks and Deportment of these new-come Gentlemen, and Others of their Kidney, That they had great Hopes of some Remarkable Turn in Publick Affairs, to their Advantage. This Juncture oblig'd the Government to be the more Watchful and Solicitous to have these Gibberish Letters Deciphered; and several Persons that were thought to be Skilled in that Art, were Employ'd; but to no Purpose.

At the same time, there was a Letter from an unknown Hand sent to her Grace the Dutchess of Queensbury, her Lord being then Her Majesty's High Commissioner; in the following Words:

Madam, May it Please your Grace,

LAST Night I was in a Place, where the Company was talking of some Letters that were fallen into his Grace my Lord Commissioner's Hands, that no Body could Read almost: But a Gentleman, may it Please your Grace, immediately replied, I am sure I know one that can, Madam, said he to me; he is a Kinsman of Yours. I asked him who it was, and he Whispered me, Mr. David Baillie, to whom I suppose (continued he) the Letters was for; for all their being Directed to David Lindsay: Nay, Sir, said I, I can hardly think that, for many Reasons, and particularly, Because I think Mr. Baillie has more Wit than to be brought into a Plot: Yes, Madam, said he, I agree with you, he has a great deal of Wit; and that is not all, for he is very Sober, he never was Drunk in his Lifetime; and that is a Quality makes any Person capable both to Manage and Conceal his Business: And I do assure you, Madam, said he to me, I do think there is no Person so fit to carry on a close Design, as Mr. Baillie; for though I know there has been nothing done this Ten Years or more, from the other Side, but what he has been Accessary or Privy to; yet I could never, notwithstanding of my Religion, and Intimacy with him, Discover whether he was so Engaged or not, but that I knew it perfectly well from another that Concern'd, that I hope to See in a Week or two; then I shall know the Meaning of these Letters. Soon after that, May it Please your Grace, I went to call for Mr. Baillie, where near his Door, upon the Stairs, I met, or rather found standing, a Black, who I have seen in a Red Coat Laced; but he was then in a dark Gray. I went to the Door, Knocked, and went in, and Enquired for Mr. Baillie; the Maid told me, He was not within; then said I, I will go into his Chamber and sit down and Cool my self; and so was going, but the Maid stopped me, and Prayed me to walk in to her Mistress; who told me, I must Excuse the Maid; for to tell me the Truth, Mr. Baillie was within, and a Gentleman with him; but had given Orders to say he was out, because he was to be busy; so prayed me to sit down there a little, which I did; and after some time, what I had heard, which was a great deal more than what was to say here, because it mentioned the Person, who I fancy the Black I see upon the Stairs belongs to, gave me the Curiosity to Ask, if they knew who was with

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Mr. Bail-

Letter to the
Dutchess of
Queensbury.

Mr. Baillie ; they said, No. Dear me, said I, how Frighted was I just now, when I met the Black upon the Stairs ; What, does he belong to the Gentleman that is with Mr. Baillie ? I do not know, said the Mistress, but I see a Black come in to Mr. Baillie this Afternoon ; and it is very like he came to see if he was within ; for I heard Mr. Baillie say as he went out, Give my Service, and I will wait my self untill he comes ; and so he walked up and down the Entry for above half an Hour, and then the Gentleman that is still with him Knocked, and Mr. Baillie let him in himself ; and as soon as he had carried him in, he came out and said, I am not within to any Body ; this is all I know, said she. So I was obliged to go home without seeing of him. But I could not be at ease till I see him, and so I found him this Morning Writing, but I know not what ; yet it served to Increase my Suspicion, for after he had done Writing, he put what he had Wrote into a Play-Book, and roll'd it up hard, and tyed it with Packthread and Sealed it ; and in less than half an Hour, which was at Ten a Clock, there came a Man who I have seen also in a Red Livery Laced, with Good Morrow Sir, I come for Cowley, if you think fit to send him. No, answered Mr. Baillie, I cannot spare him : But there is a Play will divert as well ; and they may either keep it, return, or burn it as they please ; so away went the Man who was in Black ; and I said, What Man is this ? But Mr. Baillie waved answering, and talked of the Weather, and indifferent things ; so I had no other way left to satisfy my Curiosity, but to Call out, Nay, now I believe all I heard yesterday of you, Mr. Baillie : Pray, what was that, said he ? Why, That you are a Plotter ; and so I told him all, and what suspicion his being shut up with him I fancied the Black belonged to ; and his sending away Writings under the Covert of that Play : He only Smiled, and said, I think it is certain, there will no body that knows me, believe me a Plotter ; for I have not a Head for that, and I know nothing of any Letters at all, nor of any body that would Write to me, that need to do it. Obscurely : But if they did, I should not trouble any body to explain them ; neither, if I were capable, should I give my self the Pain to unlock any other Persons Letters : So I do not see how it concerns me at all ; for that Gentleman's Weakness that was pleased to give me such a good Character, as he believed, I pity him for it if he designed it kindly ; If otherwise, I Despise the Impertinency of it, as being altogether groundless, as your Suspicion is, Madam, said he : And no doubt, whatever's contain'd in those Letters is very well known before this time ; for I believe it is only a Trick to amuse the People with an Apprehension of a Popish Successor, that they may with the more ease, bring about the Design of having Hannover Declared here, as in England. And this, I suppose, is Mr. Scott's Plot, and his Father in Law, the Queen's Advocate, and the rest of Our Courtiers, Excepting his Grace the Commissioner. Nay, it is well, said I, you except him. Yes, Madam, said he, I except him, not because he is Commissioner ; but because he is the Best, if not the Only Good Man amongst them. For tho' I am no Courtier, I go sometimes to see them Sup : But the Dutchess looks always so hard at me, I believe I shall go no more. At first when I observed her Grace looking so at me, I thought it might be because of my Cloaths, or my Stockings, being sometimes Pink-colour'd or Blue, which are too youthful for me ; but That I find is not the Thing : For the last time I was there, her Grace still looked, tho' I think there was nothing Remarkable or very Monstrous about me. But I am apt to imagine his Grace the Commissioner knows me again ; which I wonder, considering he never saw me but once, and that was at Night, and I was in my own Hair ; and so had shew'd me to the Dutchess ; and she wonders I come there. Why, said I, should she wonder at that ? Nay, that I cannot tell, said he ; Except it be, that somebody had done me the Favour, to let the D. of Q. know, or at least believe, I could do him some manner of Service last Winter, while I was at London. And his Grace was pleased to send for me by Mr. Stewart : But tho' I imagined what it was, yet I seemed ignorant, because I could not have done what would have been of Service to his Grace, without injuring others ; tho' for what I know, I might as well have done it as not. Nay, said I, if it be so, why do you not do it still ? No ; that time, said he, is past : Not but that I know what would be of more Service to his Grace than that would have been, or any thing else that can happen to him. Pray, for God's sake, tell me what that is, said I. No, no, Madam, said he, have a care of that : It is not for you, or any Woman to know that ; without it were the Queen : Nor any Man, except it were the Queen's Commissioner. And if he knew, his Enemies, I think, would have a Cold Coal to blow at. But, Madam,

when we have said enough of this; So, and it please your Grace, I stay'd some time longer, then bid adieu; and was no sooner got home, but I undertook to give your Grace this Trouble; which I have done with all the Exactness my Memory would serve me, and which I thought my self oblig'd from Two Powerful Reasons. First, I have the Honour to be of your Grace's Country; And the next, I have received many extraordinary Civilities from your Grace's most Noble and Incomparable Brother, my Lord of Burlington: And therefore if your Grace thinks fit to take notice of this, I hope you will order it so that Mr. Baillie may not suspect me, for having given your Grace any Intelligence; for that might prove of very ill consequence to me, being a Stranger, if your Grace should intimate this to any Person but the Commissioner, who no doubt will certainly find it turn to account, to gain Mr. Baillie. He lodges at Mrs. Arbuthnel's in Kennedy's-Close, near the Tronne.

May it please your Grace,
I am Your Grace's, &c.

The Dutchess having communicated this Letter to the Duke, when there happened to be several Officers of State and Privy Counsellors with him; the Duke and they were of opinion, That tho Mr. Baillie mentioned in the Letter, was a Man of a very Ill Character, and universally known to be an Enemy to the present Government: Yet they could not be answerable to their Trust, without making some Enquiry into the Matter contained in the Letter; and therefore thought it convenient the Duke should call for him, and endeavour to find out what Knowledge he had of any Designs against the Government, or of a Key to Decypher the Gibberish Letters that had been intercepted at the Post-house.

Accordingly the Duke sent for him; and it happening his Grace had not the Letters about him, he sent for him a second time, and showing him the Gibberish Letters, desired to know what he knew of any Designs against Her Majesty, and Her Government; telling him, There was Reason to suspect such Designs were in Agitation; and probably he might be acquainted with them.

Mr. Baillie read over the Letters very attentively, and pretended at first to know something of the Key to Decypher them; and with the next Breath said, he knew nothing of it. But the Duke pressing him further, he desired some time to consider of it; and then told him, he knew a Priest in Town, that could certainly Decypher them.

Tho the Duke began to suspect him, either for a Cheat or a pretending trifling Fellow, and had told Mr. Stewart his Secretary, that he thought so upon his introducing him: Yet resolving to omit no Opportunity of searching into this Matter, he sent for Baillie a third time; and having again desired to know of him, if he could Decypher these Letters, Baillie told the Duke that he could not: But withal said, he was acquainted with many Ill Designs against the QUEEN and Government, but they were Secrecs of such a Nature, that if it were known he had been with his Grace alone, he should not be alive one day longer. He began then to express what Concern he was in for the Duke, and the Difficulties he was environ'd with; And sometimes appear'd ready to discover great Matters, and the next Moment said he knew nothing: Or if he did, he was more a Gentleman than to reveal what was intrusted to him; at least he would not do it to any but the QUEEN Her Self. The Duke offered him all Encouragement to deserve the QUEEN's Favour, by discovering what he knew to Her Self: But the next Minute he seemed to change his Resolution, and pretended he would recollect his Memory, and draw up in Writing all that he knew. But tho' he came several times afterwards in the Crowd, when the Duke din'd in Publick, he never brought any thing in Writing, nor asked to speak with him. Some Nine or Ten days after, the Duke took notice to Mr. Stewart, that he saw Baillie frequently amongst the Crowd; and wish'd him to take an Opportunity to ask him, Whether he had the Paper ready he had promised him? Baillie answered, he had changed his mind, and instead of revealing it to the Duke, he resolved to be at London as soon as he, and impart it himself

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to Her Majesty, whatever he knew. Which Answer of *Baillie's* Mr. *Stewart* reported to the Duke. But upon the whole Matter, the Duke gave over all further Thoughts of him; as a Fellow that could neither do much Good or Hurt.

It's observable, That Mr. *Stewart*, the Duke's Secretary, who introduced *Baillie* to his Master, received from him from time to time an Account of what past 'twixt the Duke and him, without saying one word of the Duke mentioning to him, or he to the Duke, any particular Names. It's likewise remarkable, That whether the Person that writ the Letter to the Dutchess was a Confederate of *Baillie's*, or if he was put upon all this Artifice originally to read and pry into their Gibberish-Letters, in order to communicate the Contents of them to his Party, and thereby put them upon their Guard is matter of Conjecture. But it's certain the Key of them must have been in Scotland, the Letters themselves being directed thither; under the Cover of *David Lindsay*, a Servant of the Earl of *Middleton's*; who was expected in *Edinburgh* about the time they were intercepted: And it's not to be supposed Letters would be sent to a Place, where no body could read them.

About the 11th of October, the day before the Marquis of *Anandale* left Scotland, to attend Her Majesty upon a Special Call; there was a Letter directed to him, writ in the same Hand with that to the Dutchess of *Queensbury*, Signed *Charlotte Constable*; in the following Words. *Viz.*

My Lord,

Letter to the
Marquis of
Anandale.

THE Desire I have to serve your Lordship, puts me upon giving your Lordship this trouble: Which is, in few words to let you know, my Lord, That one Mr. *Baillie* has it now in his power to do an extraordinary piece of Service, to the Advantage of the QUEEN's Affairs, and your Lordship's Interests, which to me seems inseparable. Therefore do not slight the Advice of her that loves you, and wishes your Prosperity and Glory. But send for Mr. *Baillie*, who is truly, to do him justice, a Person of great Merit and clear Sense, and gain him to be yours: And tho' I must not be particular at this time, my Lord, yet I will tell you that he is able to advise you of what will put the Queen's Enemies and your own into your Power, and forever defeat their Designs. I think I need say no more, the Queen's Service and your own Interest are sufficient Persuasives to Diligence and Care; only I am to beg of you, my Lord, not to say any thing of this Intimation that I have given your Lordship, to any Person, for I suppose you need not want a pretence to send for Mr. *Baillie* to come to speak to you, and I have as little reason to doubt but your Lordship, if he comes to you, will take all the kind and friendly Ways to gain the Point: To make which the more easy, you may tell him, You know very well, that at this very time, there is Designs carrying on both in England and Ireland, as well as in Scotland: And though you do not know all the Particulars, and Persons Concerned, yet you know that he does; and that is not all, for your Lordship may intimate that you know that my Lord D---d the Night before he went out of Town, came to Mr. *Baillie's* Chamber about Ten a Clock at Night, and staid till Eleven; at which Hour came a certain Duke, and a little after, another Titular or Pretended Duke in Womans Cloaths, and several others, to the Number of Eleven Persons; and staid till about Four a Clock in the Morning. This Hint is sufficient to your Lordship, for you must manage all with Secrecy and Caution, and give no Alarm by Unkindness or Violence. Now, my Lord, I am to tell your Lordship, Mr. *Baillie* Lodges the very first Close above the Sign of the Sun, on the South side of the Way, at one Mr. *Killies*. I am, my Lord, your Lordship's unknown, but most Loving and Hearty Well-wisher, and most Humble Servant,

Charlot Constable.

The Letter directed thus: To the Right Honourable the Marquis of *Anandale*, Lord President of Her Majesty's Privy Council. And in a Cover directed to Mr. *Campbel* at the Marquis of *Anandale's*. And wrote within, Sir, Deliver the enclosed immediately to your Lord.

The

The Marquis being no Stranger to *Baillie's* Character, so universally known, yet believed it was proper for him, upon so plain an Advertisement as this Letter, to Enquire what *Baillie* had to say; and sent his Servant to desire him to come and Speak with him. When he came, the Marquis told him he was Inform'd, That he was Capable to make great Discoveries for the Queen's Service; and gave him Encouragement so to do. *Baillie* seemed to be Ignorant; and wonder'd that his Lordship would entertain a Person, altogether a Stranger to him as he was, upon such a Subject: The Marquis acquainted him, That though he had no Personal Acquaintance with him, yet he had such Accounts of him, as made him apt to believe, he knew things of great Importance to the Government; and thereupon mentioned to him the Particulars in the Letter he had Received, with Relation to what was there said to have past in *Baillie's* Chamber, without mentioning any Persons Names. *Baillie* appeared much surprized, and began to open a little, Acknowledging he knew very much; but said he was a Gentleman, and would make no Discoveries, but to Her Majesty Her Self. The Marquis told him, He lik'd it better he should make his Discoveries to the Queen than to himself; and doubted not but Her Majesty would Reward him for what Services he should do Her. But *Baillie* thereupon told the Marquis, That he knew his Lordship was going for *London* next day, and that he would willingly go along with him; which the Marquis consented to, provided he could make any Discoveries that might be of Consequence to Her Majesty, and Her Government: And *Baillie* Assured him, He would give his Lordship upon the Road a satisfactory Hint, of how vast a Consequence the Discoveries he would make to the Queen would be.

The next Morning, when the Marquis was ready to take Coach, *Baillie* came privately to him, and told him, That there being Company to wait upon him out of Town, he thought it would be better for him to go a nearer Way by himself, and fall in with his Lordship in the North of England; which the Marquis Agreed to, but never heard of him more.

The Marquis all this while knew nothing of what had past 'twixt the Duke of *Queensbury* and *Baillie*: Nor did the Duke know any thing of what had past 'twixt *Baillie* and the Marquis, till about a Fortnight after the Marquis his Arrival at *London*, the Duke and he Talking together, the Marquis happened to tell the Duke how he had been served by such a Fellow, naming *Baillie*. Upon which the Duke told the Marquis what had happened likewise to himself concerning him. Upon comparing *Baillie's* Behaviour towards Both, they concluded him to be a pretending Light-Headed Fellow at the best: But withal, the Marquis told the Duke, That the Ill Character he had received of *Baillie*, put him upon the Caution of having *John Bane*, one of his Servants, always in the Room, that he might hear what past betwixt them; who is positive that there was not in the whole Conversation any one Person Named on either Side.

Upon the 22th of December last, *Baillie*, after he had been at the Lord *Belhaven's*, came to the Duke of *Hamilton's* Lodgings; where he delivered a Signed Declaration by way of Letter to his Grace, in the following Words:

Edinburgh, Decemb. 22th, 1703.

May it Please your Grace,

THE Noise that is every where of a Plot, makes me think it my Duty to inform your Grace what happened to me, during the last Session of Parliament; which in a few Words was this, The D. of *Queensbury*, then Commissioner, sent for me, (but by whose Instigation I was never able to Learn,) and after a great Profession of Kindness, and Declaration of Readiness to do me Service, his Grace did Alledge, That he had it from very good Hands, that there was Designs carrying on in Scotland, England, and Ireland, to Subvert the Present Government, and to Restore the Prince of Wales; and as he Alledg'd, I was not Ignorant of them; so that he besought and entreated me for his Sake, as well as my Own; and above all, for the Preservation of Her Majesty's Person and Government, to let him know the whole Matter. To which Demands I was oblig'd to Answer, though not without Surprize and extreme

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Confusion : Yet Truth, which I hope shall ever Guide me, obliged me to declare my own Innocence, and my Ignorance of all such Wicked Enterprizes. But the D. of Queensbury stillinsisting, I was obliged to offer to withdraw ; but when I was going, he called me back from the Door, and bid me consider his Kindness to me ; for he had now not only offered me his Service, but his Personal Friendship ; and desired me to think well what I did, for he would not leave me so ; which indeed I found to my no small Mortification ; for a few days after, he sent Mr. Stewart, the same Gentleman that he had Employ'd to bring me to him before ; And Mr. Stewart having left the Room, the Duke went to his Cabinet, and as he was opening it, told me, He would show me a Rarity ; but having searched some of the Drawers of his Cabinet, he seemed as if he had been Surprized, and said, he believed he had left what he had look'd for with his Wife, and had forgot ; so he went to the Door, Called, come back again and sit down, and would needs, whether it was Reason or not, force me to do the like : And then he told me, He had a mind to show me Three Letters, that was carried by the mistake of the Postman to a wrong Person, that it seems was of the same Name ; that no doubt they contained Matters of Dangerous Consequence against the Government : Just as he had said that, Mr. Brown, that is his Valet de Chambre, came and whispered him, and when he was gone, the Duke told me, That the Dutcheß had let the President of the Sessions carry away the Letters ; but however, said he, I know very well you know what is in them, and more too. Which when I Replied, It was impossible, having never seen them : He Smiled, and said, I will warrant you do not know nothing of my Lord Number Three or Seven, nor Phirlotheus : Not indeed, my Lord, I answered, I know nothing what your Grace means. Then you do not know Duke Hamilton, my Lord of Atholl, nor the Chancellor ; nor never so much as heard of my Lord Drumond, Belhaven, nor my Lord Tarbat, nor Blantyre : Well, well, said he, Mr. Baillie you will say nothing to me, but you see I am not so ignorant as you take me to be, for I know very well who are Pensioners to France, and who are not ; Nay, I know my Lord of Atholl, and your Convert the Chancellor, is amongst the first of them now ; tho' may be, they have not been so long as your great Duke of Hamilton, Mareschal, and Belhaven ; for I know the Duke of Hamilton has been so these many Years. But when I again and again Asserted the Truth, That I knew nothing of all that ; and that if your Grace, and all the rest of the Noblemen Named, were as Ignorant and as Innocent as I, certainly they were misrepresented to his Grace ; for they were generally believed to be the best Men of the Nation : At which he cried out mightily, and so told a great many Wicked Things that had been done by your Grace, as he pretended : But I will not now trouble your Grace with a Relation of them at this time ; designing, if it please God I live, to publish the whole Conference at large, both to Satisfy my Conscience and Country, of the Duke of Queensbury's Practices to gain me to make the most horrid of all Lies, and the most Dangerous ; for he offered me great Preferments, and Money, even what I pleased, If I would but, as he termed it, tell the Queen what he would tell me ; for it seems, I would force him to be plain with me, because I would not understand. But if I would go to the Queen and tell Her Majesty, That Duke Hamilton, Atholl, the Chancellor, and the abovenamed Lords, are Actually Pensioners to France, and that they had a Publick Bank, and Managers for buying up Arms, and other Stores of War ; then he would not only promise but perform. And if I could undertake this, then he would immediately let me see a List of all those he would have brought into the Plot ; and he would swear never to let any person know but that it was a Real Plot : And that I had made the Discovery first to him ; and that he had sent me to the Queen : I say, provided I would say after him, and swear to it. Your Grace may imagine, I was not a little put to it for an Answer ; and as I remember, it was this : That I thought his Grace's Advices were certainly the best, where there was a Real Plot ; But for a Person to swear a Lye to the Queen, upon Persons that were altogether innocent, so far as I knew ; it was what I hope, and I shall never think of, but with trembling and detestation : But if any thing occur'd to me, the Discovery of which might be a Service to the Queen, or my Country, none would be readier than my self. This, may it please your Grace, I thought fit to advertise you of ; being a short Abridgment of what pass'd twixt the Duke of Queensbury and me. But it seems to me, he having failed in his Attempt on my Integrity, employ'd the Marquis of Anandale on the same Design : Who did, to do him justice, use me after another manner. For having got me into his Clutches, if I may speak so ; for he

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sent for me the very day before he went to London, and would not part with me he said, till I went to London with him, to let the Queen know how well she was served by the Duke of Athol; who, he knew, had been at my Chambers with your Grace, in Womens Clothes; and that there came there all that I named before, and my Lord Drumond and Jerviswood, and several others, to the number of Eighteen: And that there they treated of bringing home the Prince of Wales, and all that was necessary for such an Enterprize. To which when I answered, there was never any such Meeting; he said, we should understand one another better when we got into English Ground: For he thought it was unnecessary to tell me, That I must not only say there was such a Meeting, but swear it; which if I did, I would have it in my power to make my self for ever, and might be an Officer of State before I left London again. But when I reply'd, that I was not fond of swearing a Lye; and that it was impossible for me to bring my self to think of such a thing: And that I would not, tho' I had never such an Inclination to go to London, to go on that Score; therefore I hop'd he would excuse me. But he was so far from that, he flew in a Passion, and swear he would be revenged. And when he see that did not prevail neither, he fell a Coaxing me again; but I thank God, he did not succeed that way neither. Yet I told at parting, I was his humble Servant; which I really would have been, so far as never to have laid open this most abominable Villany; tho' sure nothing could be more provoking, than to be sent for by People I had never had Converse with, nor Obligation to, nor Dependance upon: And there to be flattered with great Rewards, if I would become a Villain, the most perjur'd of all Lyars; but threatened to Destruction, if I retain'd my Integrity and Loyalty. For surely let that Sett of Men pretend what they will, nothing can be more disloyal, than thus to abuse the Best of Queens, and to endanger the best of Subjects; and indeed the only sound Part of the Nation: And who, if there were any thing to be attempted, would certainly stand by the Queen and Countrey, when such Men as the Duke of Queensbury and Marquis of Anandale would desert both. May it please your Grace, I was saying before, I would never said any thing of this, had not the Noise of a Plot met me every where; and I confess I had no longer patience. And I never think of my silence, but I am ready to dye with the Apprehensions of the Dangers that the Duke of Athol and a great many other Persons are fallen into; which perhaps I might in some measure prevented, if I had sooner given your Grace the Truth of this, that you might have warned the Duke of the Designs of his Enemies; which I hope you will do now, without further delay. May it please your Grace, I am Your Grace's most Humble Servant in all Sincerity and Truth.

Sic Subscribitur,

David Baillie.

The Use of this Letter or Declaration, and the Design of it, and the manner it came to be made Publick, was this: The Letter being writ the End of December, which was the Month of the Earl of Cromerty's Waiting, there was not time in that Month to make use of it. Therefore there was no Application made to Her Majesty, during the Month of January, while the Duke of Queensbury was in Waiting; tho' all that Month there were many Surmises, and open Brags, that in a short time something would appear to make it plain, that there was no Truth in the Plot; and that they would turn the Designs upon the Contrivers of it. In the beginning of February, the Lord Justice Clark wrote up to the Earl of Cromerty his Brother, then again in Waiting, That he was inform'd of a Person that was willing to discover the Plot. And this was some time after Her Majesty had acquainted the Two Houses of Parliament, with Her having some Notices of it. The Earl of Cromerty, upon receiving this Letter from his Brother, apply'd to the Queen; and procured a Letter from Her Majesty, for Securing a Blank Person, to be named by the Justice Clark, who could discover the design'd Plot, Insurrection, and Invasion. This Letter was directed to several Privy Councillors, or any Two of them; and to be sent to the Lord Justice Clark. So that it was in his Power alone to chuse, out of the Number of the Privy Counsellors to whom the Letter was directed, any Two of his own Confidants; and they of

of themselves had power by this Letter to Examine the Person, and transmit the Examination to the Queen; without communicating the same to the rest of the Privy Council.

Now if there had not been some Latent Contrivance, and Sinistrous Designs in all this Matter; there was no need of any such Letter or Warrant from the Queen: The Lord Justice Clark himself, or any one Privy Councillor, was sufficiently impower'd to seize and examine any one they had reason to suspect guilty of, or acquainted with the Crimes mentioned in the Letter: And that without giving Her Majesty, or Her Secretaries of State, at London, any Trouble.

But this unusual Manner of obtaining the Queen's Letter, and the unprecedented Form of it coming to Light; upon a Representation made to Her Majesty, how suspicious it look'd, and that instead of Discovering a Plot against Her Majesty, it might rather tend to the Darkning of it; This Letter was Cancell'd, and a New one sent down, directed to the Lord Advocate, Ordering a Blank Person, whom my Lord Justice Clark should name, to be taken up, and the Examination of him refer'd in the Ordinary Course to the Privy Council.

In Obedience to this Her Majesty's Letter, the Privy Council met, and appointed a Committee; and the Lord Justice Clark named Baillie the Person he meant, who would make a Discovery of the Plot; and said, that the Duke of Hamilton had inform'd him so. Whereupon the Queen's Advocate caused Seize Baillie; who being brought before the Privy Council, the Lord Justice Clark, instead of asking him, What he knew of a Design against Her Majesty and Her Government? or mentioning any one word of a design'd Invasion or Insurrection, which Baillie might be conscious to, and which were the only Matters contain'd in the Queen's Letter; he asked him only, Whether any Person had offer'd to entice him, to depose against the Duke of Hamilton, the Duke of Athol, and his Brother the Earl of Cromerty, and others; as if they had been in a Plot against Her Majesty. To this Leading Question, Baillie had his Answer ready: That the Duke of Queensbury, and Marquis of Anandale, had been treating with him, to depose against the Persons the Lord Justice Clark had named.

Informations

It was Obvious to every one at the Board, that there was some Contrivances both in the Manner and Matter of the Question and Answer; and in order to find it out, they began to Examine Baillie, How, and When, and upon what Occasion he had met with the Duke of Queensbury and the Marquis of Anandale. All the Answer they could get of him, was, That he had Writ a Letter to the Duke of Hamilton, which contained all that he knew or could say of what had been ask'd him. He was told in Council, That he must declare what he had Writ in that Letter; it not being enough for him, in a Case of that Nature, to refer to it in general Terms. And in the mean time, lest there might be Impressions, Informalities, or Advices given him by the Party, which it was their Interest to do, he was Committed close Prisoner, which is the usual Course the Privy Council takes, till the Examinations are over: But at the same time he was Allowed Pen Ink and Paper, and desired to draw up in Writing all that he had to say, of what he pretended to have pass'd between the Duke of Queensbury, the Marquis of Anandale, and him.

Instead of Drawing up what he had to say in Writing, as desired by the Privy Council, he writ a Letter to the Earl of Eglinton President of the Council pro tempore; Acquainting him, That upon the whole Matter he could say no more than what he had writ in that Letter, (meaning his to the Duke of Hamilton,) and presses that the Lord Justice Clark might shew the same to the Privy Council.

The Letter runs thus:

My

My Lord,

FROM what my Lord Justice Clark said, I find that I owe my present Misfortune to him; and that it was his Lordship that procured my Confinement upon the Information given him; by whom, I know not: But he may please to know that I gave no Information to any Person, in relation to that Business that happened to me from his Grace the Duke of Queensbury, or my Lord Marquis of Anandale conditionally: For I left it to them whom I Informed, to make what Use they pleased of my Information. So consequently my Lord Justice Clark may, without the least scruple, produce his Informer, and He my Information, which was not Verbal but in Writing. Therefore, my Lord, if you please, this is what I think most Honourable for me; because as I understand my Lord Justice Clark, it was Three Weeks since he had Notice of this Business; but that he delayed Apprehending me, because the Person that spoke of me to him, did not think it fit to attempt it till there was a Warrant to Seize me, because I was a Gentleman. Now, my Lord, I think what he was pleased to add would not have given me the Assurance to have Assumed that Title to myself, for it is a very Glorious One; and it shall be one of the chief Studies of my Life to Maintain it. And therefore, my Lord, without Prejudice or Disobligation, or Obligation to either the Duke of Queensbury or the Marquis of Anandale, or my Lord Justice Clark; I do plainly say, that whatever Information I gave on this Affair was in Writing, and without either Caution or Security for my own Safety; which I think will by my own Innocence be best secured to me; not but that I hope all Justice from the Board where my Lord Eglington sits; and so do most earnestly beg that your Lordship will be pleased to desire my Lord Justice Clark to shew the Information I have already given; which I think will abundantly show how little I regard the ease of my Person, when it comes in competition with that of my Conscience; for I will always speak Truth through the Assistance of God, whatever be the Consequence. Now my Lord, I am really so ill that I am scarce able to say any thing of what the Earl of Glasgow seems to lay some Stress upon; My not owning readily enough (as he thinks) the Signification of every Word in Mr. Steel's Letter: I will only say this, That Mr. Steel and I have conversed long and very frequently, and with great Freedom; but without any other Design than to divert and amuse with little Jest of good Humour: For sometimes ours to one another would be all Raillery, after our manner; some all Tenderness, some all Scandal, some all Gallantry, some all Business, some all Devotion, and some All together; and some all Commendations and Services to the Lord knows who, to the Acquainted and Unacquainted. But I cannot think this, or, that if Mr. Steel had named all the People of both Nations that were at London when I was there, and desired me to give his Service to them all if I see them; that there is any thing in this to Oblige me to deny it; for I think Mr. Steel may very freely own any thing ever he wrote to me in his Life; and I am sure I will own any Letter ever I wrote to Steel. My Lord, Excuse this, I am sensible I have strayed from your Lordship's Orders; but the Reason why I did so, was, Because my Lord Justice Clark did seem to say as much, As if it were to secure his Informer from the Suspicion of a False Accuser, that I was taken into Custody; fearing I might either Deny or go out of the Way. As to the Denying Truth, I think no Humane Force could induce me to do that: And as for my going out of the Way, I had no Inclination, for if I had, I am sure I have had Time and Opportunity enough these Six Weeks to have done that: For upon the very first breaking out of the Plot, at least, so as to be Publick here, I sent a written Account of what had happened, which I am sure is Truth as to the Matter of Fact, which I am so far from Denying, that I desire your Lordship may procure my Lord Justice Clark to present the Paper to the Council, if you think fit: though I do say it was not to his Lordship that I sent it; yet it is certain, it has been Communicate to him; and I desire to have an Opportunity to own it, as well to free the Person that Communicated it to the Justice Clark from the Suspicion of a malicious or false Accuser, as to satisfy your Lordship. To do which, and to obtain

my Liberty again, I will do every thing becoming a Christian and a Gentleman, a Prisoner, but no Plotter. My Lord, I beg leave to say, that I am,

My Lord,

Edinburgh Tolbooth,
Feb. 8. 1704.

Your Lordship's most Humble and
very Obedient Servant,

To the Right Honourable
the Earl of Eglinton.

Sic Subscribitur,

DAVID BAILLIE

Now it's Observable in this Letter to the Earl of Eglinton, Baillie takes it for Granted all along, That the Lord Justice Clark was Master of that other Letter he had writ to the Duke of Hamilton; and in that the poor Wretch contrary to the Design of those that set him a-Work, and his own, laid open in a great Measure, what hand the Lord Justice Clark had in the whole. As fair; and in bringing it upon the Stage at that Juncture.

In the mean time, the Lords of the Privy Council sent two of their Members to the Duke of Hamilton, for the Letter Baillie had Writ to him; which his Grace delivered to them, upon the Clerk of the Council returning him an Attested Copy. Thereupon Baillie was again called before the Privy Council, and Ask'd, That since he had said in general, that the Duke of Queensbury and the Marquis of Anandale had endeavoured to Bribe him, to depose against certain Noble Persons; it was expected now, he should give the Board all the particulars of that Transaction. Baillie still insisted, That he could make no Answer, except he had a Sight of his Letter to the Duke of Hamilton. The Queen's Advocate told him in Council, That by the Law he was obliged to Answer such Questions as were put to him by the Board; and that if the Letter he had Writ to the Duke of Hamilton were True, he could not but remember the Material Heads thereof; and if it were False, he ought not to continue in a Lye: The Queen's Advocate put him also in Mind, how unaccountable a thing it was, that he should not remember what he had Writ but Five Weeks before, which was the Date of his Letter to the Duke of Hamilton; when in that very Letter, he pretended to remember a great many Things which had happened to him Five Months before; which was the time he had met with the Duke of Queensbury. The Advocate insisted further, That his Shuffling in this Matter carried with it along a great Probability, that the Letter he had Writ to the Duke of Hamilton had been Dictated, or Suggested to him; and he had since quite forgot his Lesson; whereas, if what he writ then had been True, (being a thing in its self so extraordinary,) though he might possibly forget some minute Circumstances, it was impossible he could forget in so short a time, the Bulk and Material Parts of it; Truth being Uniform, and Lies for the most part Deceiving and Confounding themselves.

Baillie continued Deaf to all that the Lords of the Council could say to him; and they to give a fair Handle to recollect his Memory, agreed to draw up some Interrogatories in Writing, which they delivered to him, desiring him to give in his Answers likewise in Writing against the next time he should be called before them.

Accordingly Baillie, when remanded back to Prison, falls to writing something like Answers to the Interrogatories had been given him: But upon Second Thoughts, he breaks off abruptly; and to cover his Confusion and Irrresolution, throws the Ink-Bottle upon the Paper, of design to Blot out what he had Writ: Which Paper the Keeper of the Prison brought to the Council.

The Council seeing they could have nothing from him in Writing, after several days time given him to do it, call'd for him again; and desired him to answer the Interrogatories, *Viua voce*: And what strange Lame Answers they were, will best appear, by placing the Interrogatories and the Answers in order.

Interrogatory 1st. *What was the Rise or Occasion of his being sent for by, or going to the Duke of Queensbury, and Marquis of Anandale, about the Plot? And, if it was any Discourse he had had with any of their Servants or Dependants; or that either he inform'd them, or they discours'd him on that Subject?* Baillie's Interrogatories and Answers. 1.

Answer. He can give no Answer thereto at all.

Interrogatory 2d. *Who brought him to the Duke of Queensbury; and what was said to him by the Person, who desired him to come to his Grace? And what he answered; and about what time this happened, as near as he can remember?* 2.

Answer. The Time was about the Latter End of July, or the Beginning of August; and does not remember what Mr. Stewart, Servant to the Duke, who brought him to the Duke, said to him; and the Declarant answered, Nothing; but went away with him.

Interrogatory 3d. *What the Duke of Queensbury said to him? What Account he gave of the Reason or Cause why he sent for him; or that any Person had recommended him: and who the Person was? And that he give account of any other Circumstance, that might have been the Cause or Occasion of the Duke's Enquiry?* 3.

Answer. Do's not remember what the Duke of Queensbury said to him; nor can he answer at present, what was the Reason the Duke gave for sending for him: And says, That the Duke said, he was recommended to him; but would not tell the Declarant, by whom.

Interrogatory 4th. *What the Duke said to him? What he inform'd him of, either as to Things, or Persons: And what he desired of him; and for what cause: And what Arguments he used, to induce him to be free and plain?* 4.

Answer. He cannot recollect himself of what the Duke inform'd him, as to any other Person; and will not answer at present, what the Duke desired of him: Nor will he answer, what Arguments the Duke used with him, to be free and plain with his Grace.

Interrogatory 5th. *If the Duke named to him any Persons; and what the Persons were? And what the Duke desired to know of him concerning them; and what he answered about the said Persons, or any thing that was discoursed to him?* 5.

Answer. Yes; And what these Persons were, will not answer at present. What did the Duke desire of him concerning these Persons: he is not to answer that at this time: What Answer he gave to the Duke, when he desired to know any thing of these Persons, &c. Will not answer that neither.

Interrogatory 6th. *If the Duke, at parting, appointed him a new time, or said he would send again for him; and to what purpose? And, if he bid him enquire, or remember himself better, as to any Particular; and bring him an Account of it?* 6.

Answer. If the Duke, at parting, appointed a new Meeting with him? Says, No: but said he would send for him again. If the Duke did bid him remember, or enquire, as to any Particulars; and bring him an account of it? He cannot answer that just now.

Interrogatory 7th. *When he met with the Duke the Second time? And what was the Occasion of it? And what further Discourse was betwixt them? And if any Persons were then named; or he desired to witness against them; or to witness any Part of the Plot, or their Hand therein; or any Correspondence thereabouts: And what else past in the Second Meeting?* 7.

Answer. At what time he met with the Duke the Second time, he cannot remember; and what was the Occasion of his Meeting with the Duke the Second time, he cannot answer. As to that, What Discourse was betwixt them the Second time: He cannot

cannot recapitulate every Particular, that past betwixt them just now : And if he named any Persons to him : Declares, Yes : And what these Persons were : He will not answer that. And if he desired him to witness against any Person : He will not answer that just now.

8. Interrogatory 8th. How long after was the Third, and then the Fourth Meetings ? And if any thing occur'd in the mean time : And what was the Occasions of the said Meetings : And what past therein, either as to Persons, or Things ?

Answer. When was the Third or Fourth Meeting he had with the Duke, He did not mind : And what occasioned the Third or Fourth Meeting with the Duke ; He will not tell that at this time : And what past betwixt them at the Third or Fourth Meeting ; either as to Persons, or Things ; He is not to answer at this time.

9. Interrogatory 9th. That you answer all the above Questions ; As to the Occasion and Manner of your Coming to the Marquis of Anandale ; and what he said to, and demanded of you ; and what you answered : And what Persons he named to you, and what he required of you, as to those Persons : And what Encouragement he promised you ; and for what cause ?

Answer. Who brought him to the Marquis of Anandale ? Answer'd, A Gentleman, whose Name is Bane, as he believes : And what the Marquis said, or asked of him ? He will not answer at this time : And what Persons the Marquis named to him ? Answers, He is not to name them now. And what he did require of you, as to these Persons ? Answers, He cannot answer that just now : And what Encouragements he did promise him ? Answer, He will not tell that at this time.

10. Interrogatory 10th. What moved you to go to Duke Hamilton, or to write to him ? Who advised you to do so ? Who introduced you ? And what said you to him, when you gave him the Writing ? And if it was Signed by you ? And what the Writing did contain ; and what you remember of the Contents thereof ? And if you shew'd it to any other Person ; and to whom ? And what his Grace said to you about it ? And if you was with him oftner than once, about this Matter ? And if you acquainted any other therewith ; and who they were ? And what past 'twixt you and them upon this whole Subject ?

Answer. He will answer no Questions as to the Duke of Hamilton, at this time.

The Examination being over, the Lords of the Council found, That his refusing to answer the Interrogatories put to him, was against Law ; and an high Contempt of the Board ; and deserv'd a severe Punishment : And yet notwithstanding of their just Detestation of the Man's Villany, their Moderation and Patience were such, That they did not proceed to Censure till they had call'd him before them once more. Then he was told, that if he continued to refuse answering to the Interrogatories, according to Law, they were obliged to inflict a Punishment adequate to his Crime. And the Queen's Advocate told him, he would prosecute him upon the Statute of Leasing-Making, and Common Grounds of the Law against Defamation and Calumny.

While Baillie stood thus Mute to whatever was ask'd him in Council, the Duke of Hamilton gave in a Petition to the Board, representing, That he had inform'd the Lord Justice Clark of the Letter he had receiv'd from Baillie ; and desired, that the Letter might be read to Baillie in Council ; and that Baillie may either own, or deny it to be his Writing. It was easily understood by the Council, That the Design of this Petition, was to give Baillie his Cue, and put him in mind of his Lesson, by hearing the Letter read. For otherwise there was no need of any such Petition ; considering, That Baillie, in his Letter to the Earl of Eglinton, had owned his Letter to the Duke of Hamilton ; and that the Letter it self was to be set down verbatim, as the Ground of the Indictment that was to follow ; which was the proper time for him to own, or deny it. And accordingly on the 24th. of February, the Indictment was brought against him, in the Name of James Duke of Queensbury, Principal Secretary of State, William Marquis of Anandale, President

ment of Her Majesty's Council, and the Queen's Advocate for Her Majesty's Interest; to the following Purpose.

THAT where by the Laws of this, and all other well-Governed Realms; The Inventing, Making, and Uttering, by Writ or otherwise, of Lyes and Slanders, to the Charging and Defaming of any Person; and especially of Persons of the highest Quality, and greatest Trusts and Offices in the Kingdom; and in matters of the highest Importance; Not only touching their Honours, Lives, and Fortunes; but tending to Misrepresent them to, and Raise and Indanger Discord betwixt Her Majesty and them: As also to raise Jealousies and Discords, and to Occasion most dangerous and pernicious Contentions betwixt them and the other Peers of the most Eminent Quality within the Kingdom, are Crimes of a high Nature, and ought to be most severely Punished, Like as by the Acts of Parliament following, it is Statute and Ordained in manner aftermentioned, viz. By the Act Ja. I. par. 2. Cap. 43. That all Leeling-makers and Tellers of them, which may endanger Discord betwixt the King and his People, shall be Challenged by them that Power has, and tyne Life and Goods to the King. And by Act Ja. 5th par. 6. Cap. 83. The foresaid Act is Ratified and Approven, and Ordained to be put in Execution in all Points: As also the same is again Ratified by several Subsequent Acts of Parliament; such as Ja. 6th par. 14th. Cap. 205: And Ja. 6. par. 20. Cap. 9. And lastly, by the Laws both of this and all other Realms, To Inform against, or Slander, or Accuse Persons as Abominable Suborners and Solicitors of others, to Accuse or Bear Witness against Persons of the Highest and Best Quality of the most wicked and horrible Crimes and Treason, and Leese-making against the Queen and the Kingdom, is a Scandal and Wicked Crime of the Highest Nature, and ought to be most severely Punished. Nevertheless it is of Verity, That David Baillie, Brother to Captain Robert Baillie of Manochall, and now prisoner in the Tolboth of Edinburgh; Shaking off all regard to Truth, Honour, and Honesty, and to Her Majesty's Laws and Authority; and with a most pernicious and wicked Design, (as the matter it self Declares) to engender Discord betwixt Her Majesty and Her Best Subjects: As also to raise Contentions, and Inflame and Incense them One against the Other, by most Abominable Lyes and Slanders; did upon one or other of the Days of December, 1703; and more particularly, upon the 22th Day of the said Month, take upon hand, to write a most False, Scandalous and Abominable Information, by way of Missive Letters, Directed to his Grace the Duke of Hamilton: Which Letter, whereof the Substance above Rebearsed, and a Copy herewith given, as a part of this Libel; the Principal put in the Clark of the Council's Hand, where David may freely see, it is a most gross Abominable and Defamatory Lye; tending to raise Discord and the greatest Mischiefs that can be Imagined. Like as the said David had the wicked Confidence, after having Written and subscribed this Letter with his own Hand; as can be proven by Comparing the same with other Writs under his Hand he gave into the Committee of the Council, and are likewise in the Clerk of the Council's Hands; where he may see them, to give or send the same to the Duke of Hamilton, who received it. And further, when the said David acknowledged before the Committee of the Council, That he had given a Written Information to the Lord Justice Clark Informer, whom he knew, as he said, to be the Causer of his Imprisonment: And desired both the Lord Justice Clark to shew both his Informer, and Communicate the Information, as David's Declaration to the Earl of Eglinton (whereof a Copy is also given to him, with this Libel, and the Principal in the Clark's Hands for him to see,) bears: And the Justice Clark had named the Duke of Hamilton for his Informer: His Grace was pleased, when desired by Two of the said Committee, to Exhibit and give up the said Principal Letter upon the Clerk's Receipt, on an Attested Double. By all which it is Evident, That the foresaid David Baillie is Guilty, Act and Part, of most abominable Leeling-making and most Defamatory Libelling, in Writing and Venting the same as said is: And that Aggravate with all the Pernicious and Mischievous Consequences above-mentioned. All which being Found and Proved before the Lords of Privy Council; the foresaid David Baillie ought to be Severely Punished for the same, with the Pains of Law at least; Conform to the 4th Act of the last Session of this Current Parliament,

Entituled, *An Act against Leasing-Makers ; in his Person and Goods, to the Example and Terror of Others to commit the like in time coming.*

Baillie was brought to his Tryal upon this Indictment ; and before he came to make his Defence, he judicially Acknowledged and Owned his Letter to the Duke of Hamilton ; which eased the Queen's Advocate of the trouble adducing Witnesses to prove his Hand-Writing. And it's Observable, That no Pains or Expence was wanting to Consult Lawyers in Order to his Defence ; although when he was Apprehended, he had not Sixpence in his Pocket ; and Answers were Printed and Industiously spread Abroad through the whole Kingdom, even before he came to his Tryal ; And they were as follows :

Baillie's Answers.

1.

It is answered for Mr. Baillie, primo, That the Subject of the Complaint being a Matter of great Importance to him ; and that the Letter which is the Ground thereof, making mention of a Plot ; in relation to which, the Declarations and Affidavits of several Persons are taken at London, that may tend much to the Clearing of this Matter ; of which, at present, Mr. Baillie is not Master ; but is in hopes to recover them : Probably they will be sent down here to the Council. And that it seems as yet there is not a full Discovery made of the Plot ; Therefore he humbly craves, that the Council may refer the said Complaint to the Parliament ; or at least delay the Proceedings therein at present ; that he may have a time to recover the Declarations and Affidavits, that have been taken at London, and other Papers, that he is to make use of for his Defence ; and until the Enquiry as to the Plot be fully concluded. And he humbly desires, That the Council may take the Point of their Consideration, in the first place.

2.

2. The Complaint being principally at the Instance of the Duke of Queensbury, and the Marquis of Anandale, and only with Concourse of Her Majesty's Advocate, which goes of course when a Process is raised at the Instance of particular Persons, *ad vindictum privatum* : And these Noble Lords not being present to insist in the Action, Process ought not to be sustained at their Instance. It being the known and uncontroverted Practice, That in all Criminal Actions, either intended before the Privy Council, or Lords of Justiciary, Processes are not sustain'd, unless the Prosecutor be present. And the Reason is evident : Because if he were present, the Defender might seek his Oath of Calumny, if he had just reason to insist in the Action ; and propound several Objections against the Libel, and verify them by the Prosecutor's Oath, that might exclude the Pursuit. Of which Benefit the Defender is depriv'd, when the Pursuer is absent. And Her Majesty's Advocate hath no Interest to pursue this Action by himself ; because it being *Actio Injuriarum*, which is but *privata Actio Legis code de injuriarum causa non publici iudicii, sed privato continet queritum* ; and the Advocate, *ratione officii*, can only pursue Actions *ad vindictum publicum*, but not *ad vindictum privatum*.

3.

3. The Complaint, in so far as it is founded upon the Laws and Acts of Parliament, against Leasing-makers, and Tellers of them, is no ways relevant to infer the Conclusion Libelled ; Because, as to the 9th Act Par. 2d Jam. VI. it's only of such, who shall by Word or Writ, Devise, utter, publish any foresaid slanderous or reproachful Speeches, or Writs of the Estate, People, or Country of England ; tending to the Remembrance of the ancient Grudge born in time of by-past Troubles : Which does not at all concern this Case. And as to the other Acts of Parliament, they are only in Relation to Leasing-makers to the King, of his Barons, Great Men, and Leiges ; and of these that makes any Evil Information of the Barons and Leiges to the King

but does no way concern Leefing-making, or flandering of one Subject to another; as is clear from the Acts of Parliament mentioned in the Complaint.

4. If the Duke of *Queensbury*, and Marquis of *Anandale*, spoke the things to Mr. *Baillie* in private, in relation to the Duke of *Hamilton*; and the other Noble Persons, which the Libel mention'd to be contain'd in the Letter; And if such Expressions, spoken of Subjects to a Subject, would infer the Crime of Leefing-making; then he behoved to reveal it, under the pain of being guilty of Leefing-making himself: It being expressly provided by the 169. Act Par. 14. Ja. VI. Anent Leefing-makers, and Authors of Slanders, which satisfies the former Laws about Leefing-making, and further statutes, That the Concealers, and not the Revealers, shall incur the like pain and punishment. So that if any such thing had been said to Mr. *Baillie*, he being oblig'd to reveal it by the Law, it was no Crime; and consequently he cannot be liable to any Punishment; according to that Rule in Law, Lib. 169. de Reg. Jul. *Ejus vera nulla culpa est, cui parere necesse sit.*

5. As the Libel is not relivant to infer Leefing-making, for the Reasons above-mentioned, so it's not relivant to infer the Crime of Defamatory Libelling: Because the Letter was only written to the Duke of *Hamilton*, for private Information, *non animo injuriandi*; as appears from the very beginning of the Letter; where it mentions, That the Noise which is every where made of a Plot, made him think it is his Duty to inform the Duke of *Hamilton* of the Matter of Fact; contained in the Letter: And the said Letter was never published nor spread abroad by Mr. *Baillie*; so that it is evident, he had no design to Calumniate or Injure these Noble Lords. And it's clear from the Common Law, and all Lawyers that have written on that Subject, *Actionem Injuriarum nunquam competere, nisi dolus & animus injuriandi adsit; quia nec injuria absque dolo & animo injuriandi committitur*; which can never be said, when a Man makes discovery only for private Information. And it's a Rule in Law, That *non factum, sed faciendi causam inspicendum.* Lege 39. Fol. de Furtis.

6. By the Law and Practice of all well-govern'd Nations, Informers of Crimes, whether there be Ground for the Information or not, (for that depends upon the Expiscation, and Tryal) ought to be encouraged; especially as to things relating to the Publick: So that when any man offers to inform, or make Discoveries, he ought not to be punish'd as a Leefing-maker, or a Slanderer, albeit he cannot prove what he informs; for ordinarily the greatest of Crimes, such as Treason, Murder, Theft, or the like, are committed with the greatest privacy, or secrecy: And no man commonly is to commit these Crimes publicly; because, then the Probation would be clear against him. As for instance, If any Man were informed of a Conspiracy against the Queen and Government, and he should discover it, as in Duty he is oblig'd, and would be guilty of Treason if he did it not; it were most absurd to pretend, that he ought to be punished as a Leefing-maker, or Slanderer, because he cannot prove what he inform'd. And the same in other Crimes; such as, If a Person design'd to murder or assassinate another, and if that Design was communicated to a third Party, and he should acquaint the Person, against whom the Murder and Assassination were intended; it were against Sense to think, that the third Person should be liable as a Leefing-maker, or Slanderer, because he could not prove the Design: For if that were allowed, no Person hereafter would ever discover any Crime, of which they have not clear Proof; and by this means, the greatest Crimes should go unpunished, and undiscovered. Whereas, if these Crimes had been timely discover'd by an Informer, they might either have been

been prevented, or the Committers thereof brought to condign Punishment.

7. Mr. Baillie being called to be the Queen's Evidence, and to give Information of what he knew in Relation to the Plot that was so much talked of; if when he was Examined before the Committee of Council, he had declared all that was contained in the Letter, upon his Examination, it would have been no Crime; and he could not have been thereupon Accus'd as a Leasing-Maker or Slanderer. But so it is, that the Letter written to the Duke of Hamilton, being produced before the Privy Council by Order of the Committee, it was Equivalent, and the same upon the Matter, as if Mr. Baillie had made that Declaration before the Committee. And the Letter to the Earl of Fglinton mentions, He desired the Information might be produced, which was not Verbal but in Writing; and that it might be presented to the Council, that he might have an Opportunity to own it: And therefore if he had made the foresaid Declaration before the Committee of Privy Council, as it would have been no Crime, but his Duty, to have Declared all he knew in that Matter, he being called as the Queen's Evidence; so by the same Reason, he cannot be Guilty of any Crime, the Letter being brought before the Council, and made Publick by Order of the Committee, as said is.

8. That Mr. Baillie had no Design to Calumniate these Noble Lords, may appear not only from a Letter written to him by Mr. Stuart the Duke of Queensbury's Secretary, ready to be produced; and from what the Lord President of the Session was so just as to acknowledge in a Committee of Council with Relation to what Mr. Baillie had then signified to them, concerning the Cyphered Letters mentioned in his Letter to Duke Hamilton; and from such other Circumstantial Adminicules as Mr. Baillie says he can adduce; But also from his Willingness to give his Oath of Calumny, That he had no design to Calumniate or Injure these Noble Lords; which ought to be admitted, according to the Opinion of the most Eminent Lawyers that have written on the Subject; and particularly Carprez in his *Practique No Criminal. Par. 2d. Quest. 97. Quando & quibus casibus locus non sit actione Injuriarum. Numb. 5th. and 6th.* Who is exprefs, That *Ad probationem quod animum injuriandi quis non habuerit non requiruntur exactæ & plenæ probationes, sed sufficiunt Conjecturæ & præsumptiones. Et si Reus Conjecturæ Judicis Intentionem suam sufficienter probare nequit, nihilominus tamen constanter perseveret se verba animo injuriandi, non protulisse juramentum purgatorium desuper ipsi deferendum si juret ab actione injuriarum absolvendus est* and *Giules lib. 2d Obser. 106.* And many other Lawyers by him there Cited. And he mentions it to have been so decided in the Imperial Chamber. So Mr. Baillie had been an Accuser as he is but a Private Informer; yet seeing he is willing to give his Oath of Calumny, That he had no Design to Calumniate or Injure these Noble Lords, it ought to Liberate him from the Imputation of a Leasing-maker and Slanderer, according to Law and Constant Practice in such Case.

In Respect whereof, &c.

To these *Answers*, it was reply'd by the Queen's Advocate, and the Council for the Duke of *Queensbury*, and the Marquis of *Anandale*, as follows :

That the First Two Answers are in the Nature of *Dilators* : And as to the First, it was Reply'd, That the Ordinary *Judicatures* are Competent and Proper to determine all Actions and Suits, that can arise among the Subjects ; and there lies no Actions in the First Instance, Cognoscible by the *Parliament* : And even in the Second Instance, upon Appeals or Reviews, there lyes no ordinary Remedy by raising Proceſs before the Parliament ; but Parties muſt firſt apply to the Parliament for a Warrant to raiſe Proceſſes of Appeal, or Review. And the ſame thing might be alledged in all Civil and Criminal Actions, to delay Proſecutions upon pretence of remitting them to the Parliament. And in this caſe, there was nothing but a private Proceſs for a Deſamation : For Mr. *Baillie* had not mentioned one word of either *Infurrection*, or *Invaſion* ; Albeit, the Warrant had been obtained from the Queen, under the ſpecious Notion, that he was capable of making great Discoveries of the Ill Deſigns, in relation to the *Infurrection* and *Invaſion*. But his Discoveries were calculated for private Quarrels, and not for publick Uſe ; And by the Law and Custom of *Scotland*, the *Privy Council* is moſt Competent to Cognosce, and give Redreſs in ſuch Matters.

It was Reply'd to the Second, That no Law, nor fixed Custom, had made it neceſſary, that Complainers ſhould be perſonally preſent : And in ſome Caſes it has been found, that it was not neceſſary. And the Duke of *Queensbury*, and Marquis of *Anandale*, being neceſſarily abſent upon Her Maſteſty's Call for the Publick Service, it were unreaſonable not to allow them to vindicate their Honour and Reputation. Altho' the Queen's Advocate cannot purſue in the Name of private Parties, without their Conſent and Allowance ; yet in this Caſe, both the Duke of *Queensbury*, and Marquis of *Anandale*, ſent down their *Declarations*, in relation to this Matter : In which they do inſiſt, that it may be Tryed and Punished : Which is more than ſufficient to inſtruct their Warrants and Concurrence. And it is a frivolous pretence, That if they had been preſent, Mr. *Baillie* might have asked their *Oaths of Calumny* ; that is, if they had reaſon to deny what was contained in his Letter ; or to inſiſt in this Proceſs. For beſides the Abſurdities and Improbabilities in the Letter, Mr. *Baillie* never pretended to have their *Oaths of Calumny* ; nor does the Law allow any *Oath of Calumny* to be asked, in relation to a Crime, Bribery and Subornation of Witneſſes ; *Nam nemo tenetur ju-*

rare in suam turpitudinem. So that there is not the least reason to Demurr upon the *Dilators*.

As to the First and Second Peremptors, which are stated the Third and Fourth in the Defence; it is Reply'd, That the Complaint is founded upon Two distinct and separate Grounds; *viz* *Leefing-making*, which is generally understood to relate to the Sovereign, the Estates of Parliament, the Great Men and Ministers in the Government. So this Complaint from the Duke of *Queenbury*, and Marquis of *Anandale*, is well founded on these Laws. And albeit by the Act in the last *Session* of Parliament, the Laws in relation to *Leefing-making* being too General, were restricted from Treason, or from Punishments inferring the Loss of Life or Limb: Yet it is expressly declared, that the Laws do stand in good, and the Crimes are punishable by an Arbitrary Punishment; that is, *Fine, Prison, Pillory, and Banishment*.

The other Ground upon which the Complaint is founded, is competent in the Common Law to every Subject against *Defamation* and *Calumny*. And in this Case, the Quality of the Persons, or the Dignity of their Offices, are only brought in as Aggravations of the Crime: And whereas it is pretended, that by the Laws against Slanders and *Leefing-making*, the Hearers are bound to Reveal, and are Punishable if they Conceal; that does only relate to *Leefing-making* and Slander on the Sovereign, and the Estates of Parliament; and while *Leefing-making* was Treason, and consequently the Concealing of it was Treason. But now when it's neither Treason, nor Inters a Capital Punishment, there is no Danger of the Concealing, especially when it relates only to Subjects and private Persons. And if the Law had obliged Mr. *Baillie* to have Revealed, yet that could be only to the Government; and to have Revealed to a particular private Person could never have excused or secured Mr. *Baillie*, if he had been obliged to Reveal; as indeed he was not.

It is repli'd to the 5th, That in Law and Reason, an Information given to a Private Party, containing a Slander and Defamation, is always taken in *Malam partem & ex animo Injuriandi*. Whereas, when Persons Inform a Government, make Oaths, or Declarations, being called thereto by Authority, it is always taken in *Bonam partem*, and believed to be the Mind and Sense of the Informer, who is in his Duty, or by force of Law obliged to make a Declaration or Discovery.

It is repli'd to the 6th, That it is indeed the Interest of the Publick. that Persons in their Duty declaring Truth, Revealing or Discovering Crimes, should be safe, though they are not able to Prove what they say; because most Crimes are perpetrated privately: But this holds only when Discoveries are made to the Government, when they be forced to declare by Interrogatories or Questions put to them by Authority; in which Case, every Subject is bound to Answer; and so it is no Officious or Ultronious Act. And therefore the Declaration or Discovery is presumed to be Dutiful, and to be True; and except such Declarations and Testimonies were redargued in a Process of Perjury, and proved to be false, the Parties cannot be quarrelled for what they have discovered to a Government, or declared by force of Law: But where Informations are given to private Persons Ultroniously and Officiously, especially to the Persons concerned to endanger Strife; there the Informer is upon his Hazard, either to make Good what he has said, or to be liable in Punishment as a Calumniator; because there was neither Duty nor Necessity that obliged him to Inform; and if he has done it Voluntarily and Petulantly, he is obliged either to make it Good, or Suffer for it.

It is replied to the 7th, That by the former Answer it is plain, That Baillie is not in the Case of the Queen's Evidence as to this Letter, because he had voluntarily Sign'd and Delivered the same to a private Party, a Month before the Queen's Order to apprehend him.

It was repli'd to the last, Let Mr. Baillie say now what he pleases, That what he Inform'd was not *ex animo Calumniandi*, but only to Inform the Duke of Hamilton, *sine fraude & dolo*, cannot pass; because in private Informations *dolus & culpa semper presumitur*, If the Informer cannot Prove or make Good what he had said; and it is true, That Calumny being a Crime, cannot be committed *sine dolo*, or ill Design; But the Law says, *in culpa equiparatur dolo*; Therefore if that Charity could be given to Baillie, That he had no ill Design, and was only imposed upon or befoo'd; yet that Folly is so gross, that in Law and Reason it must be constructed equal to an ill Design; and if any body will reflect upon the Letter it self, they will find it Stuffed with *Virulence* and *Malice*.

Upon a full hearing of both Sides, there being *Thirty one Privy Counsellors present*, Baillie was found Guilty of Defamation; declared Infamous, and Banish'd the Kingdom for Life, without one Contradictory Vote; and Sentenced to stand in the Pillory by a Majority.

This

This wretched Man has had the Fate that attends for the most part those that are hounded out by others, to perpetrate a Villany, to owe their Ruin to those that set them on; for though he was capable enough of himself to do a wicked Thing, yet he might have evaded the Punishment that was due to it; if those that Employed him had taken any reasonable Care to preserve him. If the Lord *Justice Clark* had caused apprehend and examine him in the ordinary Course of Law; or if those that set him on to write the Letter to the Duke of *Hamilton*, or wrote it for him (which is more probable) had thought him fit to be Trusted with a Copy of it, he might easily have Conn'd his Lesson better: But it seems, they had not such Confidence in him, as to bring him and his Story upon the Stage, untill they had first Fixed him by a Declaration under his Hand; so that the poor Wretch happening through the Parties ill Management to be shut up from Advice, and from the sight of the Letter they had made him Write; he for fear of spoiling or contradicting what he had thus Writ, chus'd to say nothing at all.

Indeed the whole Matter of his Letter to the Duke of *Hamilton* is such, that nothing can be more incredible. It's a Contradiction to common Sense, to imagine, That the Duke of *Queensbury* and the Marquis of *Anandale* could be Guilty of so much Imprudence, or rather Stupidity, to talk of such nice Points as are mentioned in that Letter, to one of such a prostituted Character as *Baillie* ever was, and he at the same time utterly a Stranger to them Both. As there are several things in that Letter, which could not possibly be known by *Baillie*; a convincing Argument of the Falshood of the whole: So there is one Expression in *Baillie's* Letter to the Duke of *Hamilton*, that deserves an Explanation; he tells him, That let that Set of Men pretend what they will, [meaning those that were for discovering of the Plot] nothing can be more disloyal than thus to abuse the Best of Queens, and endanger the best of Subjects; and indeed the only sound Part

of the Nation. This shows his Malice, his Principles ; and where his Dependance lies. Now it's become the usual Cant among all those that are known to be disaffected to the Queen's Government, to pretend to have more than ordinary Loyalty to Her ; and to fix the Character of Disloyalty upon all those that went into the late Revolution, or are entirely for the Prosperity of Her Majesty's Government and Reign , and against a Popish Successor. We have had remarkable Instances of this in Mr. Keith and Mr. Ferguson ; who by their own Confessions , have kept Treasonable Correspondencies with France : Yet these Gentlemen had nothing more frequent in their mouths , than *Encomiums* upon Her Majesty, and Protestations of their Zeal for Her Person ; when at the same time they were carrying on a Conspiracy against Her Government. And so gross was that Expression in Baillie's Letter , that the *Flying-Post*, another Tool of the Party , thought it fit in his Paper of the Second of March, to leave it out ; tho' he pretends to Copy the Letter *verbatim*. And since I am mentioning this Author , it's but reason I take notice of his Care to inform the World , in another of his Papers, that Baillie own'd himself a Protestant upon his Tryal, and offer'd to take the *Formula* , or Oaths ; whereas his Character has ever been that of a Papist ; and both his Letters to the Duke of Hamilton , and Earl of Eglington, have a Cross over his Name ; a thing very usual amongst the most Bigotted of that Perswasion. And in his Letter to the Dutchess of Queensbury, when Baillie is commended for his Capacity, there is a plain Insinuation of his being a Papist.

He

It is not the first time we have heard of Sham-Plots, to defeat the Discovery of Real Ones ; and many times the Tools employ'd, come to meet with the Reward of their Villany. We have a fresh Instance of this in the foregoing Case of Baillie ; which has made no little Noise both in Scotland, and here in England. They are

but little acquainted with the Affairs of that Kingdom that know not how great a Party there is that oppos'd the late *Revolution* at first, and have ever since endeavoured to embroil the Kingdom; and however disguis'd their Designs may be, they are in their Heart in the Interest of their pretended King at St. *Germain*. The Account and Part the World present

What Methods have been in agitation ever since the Queen's Accession to the Throne, to shake the present Constitution, and to bring in that pretended Prince, are now under the Examination of *Those* that are best able and most willing to find them out.

The Notices Her Majesty received of these Practices were made Publick by a Speech to Both Houses of Parliament. And it was no wonder that the Persons who knew themselves in Danger, should leave no means Unessay'd to prevent a Discovery, and throw Dirt upon any One they thought might be Instrumental in it. The Duke of *Queensbury* had, in the High Post he was in, omitted nothing that became him, to find out and prevent whatever Practices tended to the Prejudice of the Queen, whose Person he had the Honour to represent; and therefore was to expect all the Returns of Hatred and Malice of those who were concern'd. But considering his Natural Temper and Universal Character, of being free from Revenge, though never so much Disobliged, one could hardly have dreamed, that Malice it self could have run so high as to set a Villain at work to take away his Reputation. But so it was; and how vain soever the Attempt might be, they were resolved to try it: *Baillie* was the Man pitcht upon; and though he had one Quality requisite for his Post, he wanted another to make him a *Finish'd Tool* for the End he was Design'd; for if he had not been as much *Fool* as *Knave*, the Contrivance might have been better Laid, and better Executed.

The

The Design of these Sheets, is only to give an Impartial Account of this Matter, taken from the Original Letters and Papers, transmitted from the *Council of Scotland*; that the World may no longer be Imposed on by such false Representations, as have been Industiously spread About.

F I N I S.

The Director of the Bureau of
Prisons, Washington, D.C.
has received from the
Governor of the State of
California, a report of the
Commissioner of the State
Prison, Sacramento, California,
dated January 1, 1911, in
which it is stated that the
prisoners of the State Prison,
California, are being
employed on the
public works of the State.

F I M I S

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